

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

ORDER	
Shirley & Kenneth Fox, Petitioners-Appellants, v. Dickinson County Board of Review, Respondent-Appellee.	Docket No. 10-30-0678 Parcel No. 03-09-226-008 Docket No. 10-30-0679 Parcel No. 03-10-101-012 Docket 10-30-0680 Parcel No. 03-09-203-016 Docket No. 10-30-0681 Parcel No. 03-09-226-005

On October 14, 2011, the above-captioned appeals came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants Shirley and Kenneth Fox (Foxes) were represented by Attorney Michael J. Houchins, of Zenor and Houchins, P.C., Spencer, Iowa. The Board of Review designated Assistant County Attorney Lonnie Saunders as its legal representative. The parties agreed to this appeal being considered without hearing. Both parties submitted documentary evidence in support of their position. The Appeal Board now having examined the entire record and being fully advised, finds:

Findings of Fact

Shirley and Kenneth Fox, owners of property located on East McClelland Lane, Spirit Lake, Iowa, appeal from the Dickinson County Board of Review decision reassessing their properties. According to the property record cards, four sites on the north side of Big Spirit Lake are as follows:

Docket Number	Parcel Number	Acres	Lot No.	Location	Acres	EFF Unit Price
10-30-0678	03-09-226-008	0.199	70	Shoreline	0.199	\$5000
10-30-0679	03-10-101-012	0.239	45	Shoreline	0.239	\$5000
10-30-0680	03-09-203-016	0.233	121	Off-Lake	0.233	\$800
10-30-0681	03-09-226-005	0.196	73	Shoreline	0.196	\$5000

The McClelland's Beach sites include three lakeshore lots with \$5000 per *effective* front foot unit pricing and one off-shore lot with \$800 per *effective* front foot unit pricing on Spirit Lake. The subdivision was platted in 2007 and received a three-year platting law adjustment for assessment years 2007, 2008, and 2009 which was removed for the 2010 assessment.

The real estate for all four lots was classified as residential on the initial assessment of January 1, 2010. Lot 70 was valued at \$254,900, representing \$254,900 in land value and no improvement value. Lot 45 was valued at \$296,900, representing land value only. Lot 121 was valued at \$64,500 in land value. Lot 73 was valued at \$258,900. These were changes from the 2009 assessment.

The Foxes protested to the Board of Review on the ground the assessments are not equitable as compared to like properties in the taxing jurisdiction under Iowa Code section 441.37(1)(a), and that the properties were assessed for more than authorized by law under section 441.37(1)(b).

The Board of Review granted the protest, in part, on the lakeshore Lots 70, 45, and 73 by giving a -10% adjustment for the road easement crossing the property and reduced the assessments accordingly. They denied the protest for off-shore Lot 121. Foxes then appealed to this Board asserting the same grounds and seeking the lakeshore lots be assessed at \$3500 per front foot similar to lots located at Shore Acres and Martha Yarns because of the road easement.

According to the Board of Review, McClelland's Beach was formerly used exclusively as rental real estate by tenant-leaseholders. Those tenants constructed dwellings on the leased land. In 2007, the McClelland's Beach Subdivision was surveyed and platted. The subdivision received the benefit of the three-year platting law under section 441.72 for assessment years 2007, 2008, and 2009. The adjustments were removed for the 2010 assessments, substantially increasing the property assessments.

Foxes submitted a district court settlement which resolved disputes between the owners, six members of the Bartel/Fox family and the leaseholders of the beach lots. Under the terms of the settlement, the lots were offered for sale to the leaseholders at a standard price of \$5000 per front foot. Subsequently, twenty-four of the lots sold to leaseholders at \$5000 per front foot (Exhibit H). Leaseholders that declined to purchase the leased land were granted lease extensions. Under the leases, the leaseholders were granted a right of first refusal and option to purchase the leased ground during the lease term. The leases set the rent amounts, a property tax base payable by Foxes, and provided that future tax increases were payable by leaseholders. The leases had a term of eleven years, expiring May 1, 2020.

Foxes submitted an exhibit in the certified record listing the land assessment of other lakefront properties on Martha Yarns and Shore Acres based on both per-linear-foot of shore-frontage values and per-square-foot parcel values. Foxes divided the land assessment by the actual lakefront footage to arrive at per-front-foot values and per-square-foot parcel values. They calculated the average value of lakefront footage at Shore Acres, which has a concrete road, at \$4221; the average at Martha Yarns at \$3500; and the average at McClelland Beach at \$4691.65. They contend the McClelland Beach lots are small and cannot accommodate larger homes or garages as compared to other subdivisions' lake lots. Foxes report that a zoning ordinance change, which increased the construction set back from three feet to six feet, coupled with the small lot sizes, restrict construction to small summer cottages and do not allow larger year-round homes. They report 58 of the 146 lots were sold since the subdivision was formally platted in 2007, but none have sold during the past two years. In brief, Foxes propose the following three pricing groups for the lakeshore property:

Lot Numbers	Price	Foxes' Comments
78-98	\$4,500	Lots have no easements or road crossing the lots
6-77	\$3,500	Lots have a road easement which makes the back of the lot undevelopable & restricts size of home
1 & 5	\$4,000	Lots Inferior beachfront, but deeper allowing larger home

The Board of Review provided an explanation of the method used for calculating land values based on front footage. The dimensions of the lot were used to calculate the effective front foot of lakeshore by adjusting the actual footage by a depth factor, then multiplying the result by a unit price. The assessor uniformly applied a unit price of \$5000 per *effective* front foot in this lake area, except for off-shoreline lots 109, 110, 111, 112, 113, 115, 120, and 121 which has an \$800 unit price per *effective* front foot.¹ This figure would then be adjusted if a pie-shaped or other adjustment was needed. Exhibits C and D show the “85-15” method developed and used by the assessor for lakeshore pie-shaped lots. A map factor of 0.94 was applied to this product for all parcels. The following chart summarizes the Board of Review exhibits showing the land assessments of the subject properties:

Docket Number	Parcel Number	Lot No.	FF	EFF	Unit Price	AV Land	AV per EFF	BOR Adjust	BOR Land Value	Appellant Value
10-30-0678	03-09-226-008	70	52.98	54.23	\$ 5,000	\$ 254,900	\$ 4,700	10%	\$229,400	\$ 185,430
10-30-0679	03-10-101-012	45	60.25	63.18	\$ 5,000	\$ 296,900	\$ 4,700	10%	\$267,200	\$ 210,875
10-30-0680	03-09-203-016	121	120.00	85.80	\$ 800	\$ 64,500	\$ 752		\$64,500	\$ 40,000
10-30-0681	03-09-226-005	73	54.02	55.09	\$ 5,000	\$ 258,900	\$ 4,700	10%	\$233,000	\$ 189,020

We note Foxes used a different method of calculating the unit values of the properties than used by the assessor. Foxes’ method failed to consider or apply any depth, shape, or map factor to the properties. The assessor considered these factors to calculate *effective* front foot, as opposed to the unadjusted front-foot measurements used by Foxes and the settlement terms.

The Board of Review provided a list of twenty-four land sales that occurred in 2007 and 2008² when the properties were first made available for purchase by leaseholders (Exhibit H). The lots range from 35.23 front feet to 72.99 front feet. Sale prices ranged from \$140,000 to \$364,950, or \$5000 per front foot. The 2010 land assessments for these properties range from \$118,400 to \$325,600, or \$3977 to \$4700 per front foot and a median of \$4367 per front foot. Foxes’ lakeshore lots are assessed at

¹ We note PAAB has considered additional common evidence filed in companion Dockets 10-30-0615 thru 0677 and 0684 concerning off-shore lots at McClelland Beach.

² With the exception of one sale from 2004, the list was limited to the 2007 to 2008 time period.

\$4700 per effective front foot, before the Board of Review, which is the upper range of other lakeshore property.

The Board of Review also submitted Multiple List Service Book (MLS) entries showing various parcels in December 2009 and 2010 (Exhibits J and K). Two of the December 2009 and December 2010 listings were for land sales of two lots included in this appeal (Lots 70 and 73). Both of these listings offer the lots for significantly more than their assessed values and Foxes' proposed values. Lot 70 is offered at \$286,092, is assessed at \$229,400, and Foxes seek an assessed value of \$185,430. Lot 73 is offered at \$291,708, is assessed at \$233,000, and Foxes seek an assessed value of \$189,020. The 2009 MLS list shows all lots are offered for more than their assessed values. The lots are listed at \$5250 to \$5400 per front foot.³ However, the list price is not a reliable indicator of the fair market value of these lots on the assessment date since the actual sale price may vary from the listing price.

Reviewing the record, we find the preponderance of the evidence does not support the Foxes' contention their assessment is inequitable. We find the Board of Review's explanation of land pricing was reasonable and the method was applied uniformly to other lakefront and off-lake lots in Foxes' area and do not reflect inequitable assessments. Additionally, the sale prices of the leased lots established in the 2007 settlement and the actual sales of McClelland's waterfront lots do not support Foxes' claims that the properties are assessed for more than authorized by law. Their proposed values are based on unproven assumptions and are not supported by competent evidence of the fair market value of the properties. We believe the preponderance of the evidence fails to prove inequitable assessments or over-assessments of Foxes' properties as of January 1, 2010.

³ While the properties are listed at a price per front foot, they are assessed per *effective* front foot.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The gist of this test is ratio difference between

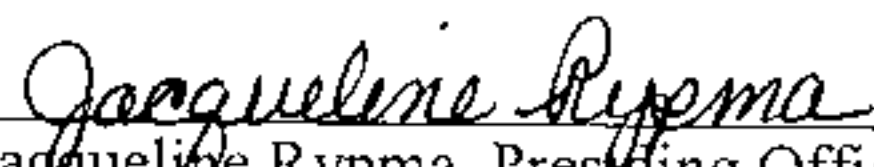
assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1). Foxes failed to prove inequity under either of these methods.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). But this Board must be presented with more than just general assertions of what affects market value. We must look at market data to determine whether the property is assessed for more than authorized by law. In this instance, Foxes did not present any quantifiable data to show their properties were over-assessed. The Board of Review presented sales of comparable properties that showed the subject properties are not over-assessed. We find Foxes failed to provide sufficient proof their properties are over-assessed and they failed to provide proof of the fair market value of the subject properties.

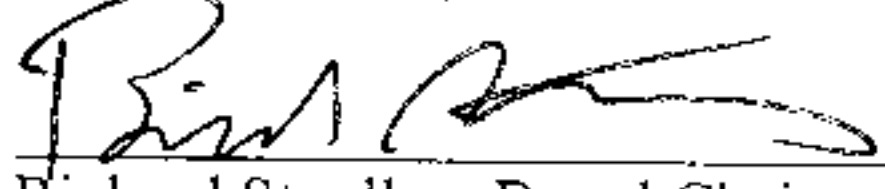
Viewing the record as a whole, we determine the preponderance of the evidence does not support the Foxes' claims of inequitable assessments and over-assessments as of January 1, 2010.

THE APPEAL BOARD ORDERS the January 1, 2010, assessments as determined by the Dickinson County Board of Review are affirmed.

Dated this 7 day of December 2011.


Jacqueline Rypma, Presiding Officer


Karen Oberman, Board Member


Richard Stradley, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>12-7</u> , 201 <u>1</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
